

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Hoffman Communications, Incorporated  
Owner of Antenna Structure 1040998  
Chester, Virginia

)  
)  
)  
)  
)

File Number EB-02-NF-130  
NAL/Acct. No. 200332640002  
FRN 5011671

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: December 5, 2002

By the Enforcement Bureau, Norfolk Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Hoffman Communications, Incorporated ("HCI"), owner of antenna structure number 1040998 in Chester, Virginia, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Commission's Rules ("Rules").<sup>1</sup> Specifically, we find HCI apparently liable for failing to maintain good visibility of its antenna structure.

**II. BACKGROUND**

2. HCI obtained an Antenna Structure Registration ("ASR") number of 1040998 for its structure located at 10600 Jefferson Davis Highway, Chester, Virginia, at the North American Datum 1927 coordinates of North 37 22' 52" and West 077 25' 24." The ASR listed the structure height of 109.3 meters above ground level and it prescribed painting and lighting in accordance with the Federal Aviation Administration Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13.

3. On March 11, 1999, an agent of the Commission's Norfolk Resident Agent Office ("Norfolk Office") inspected HCI's antenna structure number 1040998. The agent found that the structure's paint provided poor visibility. On April 13, 1999, the Norfolk Office released a Notice of Violation to HCI citing, *inter alia*, violation of Section 17.50 of the Rules for failing to clean or repaint its antenna structure to maintain good visibility. In response, HCI wrote that it planned to replace its antenna structure.

4. On August 20, 2002, an agent from the Norfolk Office inspected HCI's antenna structure number 1040998. The agent found the structure's paint deteriorated such that the contrasting color bands could not be easily distinguished, resulting in poor visibility of the structure. HCI's vice-president stated that the structure's markings had not been repainted since the March 11, 1999, inspection because HCI could not find a tower company that would climb the structure.

---

<sup>1</sup> 47 C.F.R. § 17.50.

### III. DISCUSSION

5. Section 17.50 of the Rules requires antenna structure owners to clean or repaint their structures as often as necessary to maintain good visibility when painting is required. HCI's structure required painting, but from March 19, 1999 to August 20, 2002, HCI failed to repaint it to maintain good visibility.

6. Based on the evidence before us, we find HCI willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 17.50 of the Rules by failing to clean or repaint its antenna structure to maintain good visibility.

7. Pursuant to Section 1.80(b)(4) of the Rules,<sup>4</sup> the base forfeiture amount for failing to comply with prescribed lighting or marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> HCI is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean or repaint its antenna structure to maintain good visibility.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, HCI SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

---

<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>3</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Hoffman Communications, Incorporated, PO Box 676, Chester, VA 23831.

#### **FEDERAL COMMUNICATIONS COMMISSION**

Joseph P. Husnay  
Resident Agent, Norfolk Office, Enforcement Bureau

---

<sup>8</sup> See 47 C.F.R. § 1.1914.

Hoffman Communications Incorporated  
PO Box 676  
Chester, VA 23831

Hoffman Communications Incorporated  
PO Box 676  
Chester, VA 23831